FILED
11/05/20
04:59 PM

A2011001

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of TracFone Wireless, Inc. (U4321C), América Móvil, S.A.B. de C.V., and Verizon Communications, Inc. for Approval of Transfer of Control Over TracFone Wireless, Inc.	Application No. 20-11-__

JOINT APPLICATION FOR APPROVAL PURSUANT TO SECTION 854(a) OF TRANSFER OF CONTROL OVER TRACFONE WIRELESS, INC.

(PUBLIC VERSION)

(CONFIDENTIAL EXHIBITS 2 and 4 NOT ATTACHED)

Daniel K. Alvarez
Mia Guizzetti Hayes
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006
Telephone: 202-303-1000
Email: dalvarez@willkie.com
mhayes@willkie.com

Attorneys for América Móvil, S.A.B. de C.V. and TracFone Wireless, Inc.

Rudolph M. Reyes, Jr.
Jesús G. Román
Jane Whang
Public Policy & Legal Affairs
Verizon
15505 Sand Canyon Ave. D204
Irvine, CA 92618
Telephone: 949-286-7202
Email: jesus.g.roman@verizon.com

Attorneys for Verizon Communications Inc.

Date: November 5, 2020

TABLE OF CONTENTS

List of Exhibits

Exhibit 1:	Pre- and Post-Closing Ownership Structure
Exhibit 2:	September 13, 2020 Agreement (Confidential)
Exhibit 3:	Joint Applicants' Articles of Incorporation and TracFone Certificate of Good Standing
Exhibit 4:	Financial Statements of TracFone Wireless, Inc. (Confidential)
Exhibit 5:	Declaration of Chesley Dillon (Confidential, Redacted)
Exhibit 6:	Verizon Communications Inc. Form 10-K
Exhibit 7:	América Móvil, S.A.B. de C.V. Form 20-F (Link)

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of TracFone Wireless, Inc. (U4321C), América Móvil, S.A.B. de C.V., and Verizon Communications Inc. for Approval of Transfer of Control Over TracFone Wireless, Inc.	Application No. 20-11-__

JOINT APPLICATION

Pursuant to Sections 851 through 854 of the California Public Utilities Code and Rule 3.6 of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission"), TracFone Wireless, Inc. (U-4321-C) ("TracFone"), América Móvil, S.A.B. de C.V. ("América Móvil"), and Verizon Communications Inc. ("Verizon," and, together with TracFone and América Móvil, the "Joint Applicants") request that the Commission approve the transfer of TracFone from América Móvil to Verizon. As reflected in Exhibit 1, TracFone will become a direct subsidiary of Verizon.

I. INTRODUCTION

We file this Joint Application in connection with a proposed parent-level transaction in which América Móvil would transfer TracFone, a non-facilities based commercial mobile radio service ("CMRS") provider and an indirect, wholly-owned subsidiary of América Móvil, in its entirety to Verizon (the "Transaction"). The Commission has foregone review of transactions like this in the past. For example, the Commission did not require applications for, or engage in formal review under California Public Utilities Code Sections 851 through 854 of, T-Mobile's acquisition of MetroPCS (now Metro) in 2013, AT&T's acquisition of Leap Wireless (the parent of Cricket) in 2014, or DISH's recent acquisition of Boost Mobile in 2020. The Commission used Decision 95-10-032's streamlined process to forgo review of transfers of control of these prepaid wireless providers. The Commission should take the same approach here.

To the extent the Commission does review the Transaction, its review should be limited to the public interest standard in Section 854(a). Subsections (b) and (c) in Section 854 do not apply because TracFone's gross California revenues have not exceeded $500 million in either of the past two calendar years, and both América Móvil and Verizon are holding companies with no California revenues.[1] And even if the Transaction were not statutorily exempt from review under those subsections, it is not of the type the Commission typically reviews under them: it does not involve the acquisition of an incumbent local exchange carrier (ILEC), nor does it result in the combination of two traditionally regulated telephone systems. TracFone is a Mobile Virtual Network Operator (MVNO) – not a facilities-based provider – and it is subject to extensive competition among MVNO wireless providers (as the Commission has recognized). The allocation of economic benefits analysis under

---

[1] Applicants are not providing Certificates of Good Standing for Verizon or América Móvil because, as holding companies, they have no operations in California. In such cases, the Commission does not require a Certificate of Good Standing from the California Secretary of State. *See, e.g.*, D.17-11-026 and D. 19-01-039. TracFone's Certificate of Good Standing is included in Exhibit 3 attached hereto.

Section 854(b) would also be improper here, as the Commission has previously concluded that reviewing acquisitions of telecommunications companies not traditionally regulated (such as wireless carriers) for "ratepayer" benefits would be a "futile exercise," not in the public interest. Because the Transaction is not adverse to and rather will advance the public interest in several material respects, it meets the standard for approval under Section 854 and should be approved expeditiously.

TracFone offers prepaid, no-contract services to value-conscious customers and others. Following the Transaction, TracFone customers will get the best of both worlds: more choices, better services, and new features thanks to Verizon's investments, but with the same flexibility and control that customers value in TracFone's prepaid plans. Verizon also intends to provide a range of prepaid plans, so more consumers can enjoy mobile access at price points that work for them. With Verizon's backing, TracFone will compete even more vigorously in the prepaid segment. Such a result will specifically advance the public interest in the following ways.

The Transaction will deliver public interest benefits in the form of more options and better choices for TracFone's generally value-conscious set of customers. The Transaction will provide TracFone customers with access to a wider variety of Verizon-compatible devices (including smartphones, tablets, and wearables). And Verizon will bring its world-class vision for 5G and other technological advances to TracFone's customers more rapidly, as well as new services such as home internet solutions. Verizon also will make international roaming options, anticipated to cover more than 100 countries around the world, more broadly available to TracFone customers; today, most of TracFone's brands do not offer international roaming options, and those that do limit those options to a handful of countries. TracFone customers also will benefit from the innovative approach and service experience that have made Verizon the leading provider of postpaid mobile services. And Verizon intends to maintain TracFone's ETC status and will continue to offer Lifeline service through TracFone where it will offer service through its own network.

Today, nearly two thirds of TracFone's more than 20 million customers[2] are already served by the award-winning Verizon network. Following the Transaction, Verizon intends to migrate to its network those TracFone customers whose service now rides on the networks of other facilities-based carriers. These customers, and any new customers TracFone attracts, will reap significant benefits from the Transaction, because they will experience Verizon's award-winning network quality and its innovative approach to service and technology. At the same time, Verizon is committed to providing TracFone customers with the best value in wireless services, and will not require any TracFone customers to move to a more expensive plan when the transaction closes. Verizon intends to use attractive offers and promotions to encourage those customers needing to switch out their devices to do so over time. Verizon also will add thousands of additional distribution points, some of which will be dedicated to TracFone products.

The Transaction will accelerate Verizon's ability to compete for and better serve value-oriented customers. The Transaction will promote competition in the

[2] *See* América Móvil, U.S. TracFone Footprint, https://www.americamovil.com/English/about-us/footprint/default.aspx (last visited Oct. 28, 2020).

wireless prepaid segment that serves a significant customer base driven by price and value.[3] Consumers seeking prepaid options can choose between many prepaid brands and have the ready ability to switch between them, as demonstrated by an annual churn rate of 48.3 percent in the prepaid segment compared to an annual industry-wide churn rate of 15.9 percent.[4] Following the Transaction, consumers will have even better options from which to choose. Verizon's current prepaid presence is largely as a wholesale provider, as it does not own an established "flanker" brand that it can use to attract value customers. By comparison, T-Mobile (which acquired MetroPCS (now Metro) in 2013), AT&T (which acquired Cricket in 2013), and DISH (which recently acquired the prepaid brand Boost and its customer base from Sprint) all currently have substantially more retail prepaid customers than Verizon. The Transaction is thus a natural evolution of Verizon's wholesale distribution relationship with TracFone, and it will give Verizon the ability and incentive to compete aggressively for prepaid customers and to challenge T-Mobile, AT&T, and DISH.

Verizon's enhanced ability to compete in the prepaid segment will not harm competition for mobile telephony/broadband services for consumers generally. Even presuming that all existing TracFone customers whose service now rides on

---

3 *See United States v. Deutsche Telecom AG*, Case 1:19-cv-02232, at ¶ 18 (D.D.C. filed July 26, 2019), https://www.justice.gov/opa/press-release/file/1187721/download (noting that the retail customers who purchase prepaid mobile wireless service "tend to be even more value conscious, on average, than postpaid subscribers").

4 The prepaid churn rate "indicates that consumers are not only willing but are also able to switch easily between service providers." Federal Communications Commission, *Communications Marketplace Report*, Report, 33 FCC Rcd 12558, 12567 ¶ 11 & n.33 (2018) ("*Communications Marketplace Report*").

the networks of other facilities-based carriers migrate to Verizon's networks, and that the rest of the market remains static, the Transaction will have no material impact on the mobile telephony/broadband services marketplace; at most, the impact of attributing those customers to Verizon is *de minimis*, representing the net addition of roughly two percent of all mobile wireless connections.

For these reasons, and for the reasons set forth below, the Transaction is in the public interest and the Commission should expeditiously approve it.

II. THE PARTIES

A. Verizon

Verizon, a publicly traded Delaware corporation, is in its 20th year as one of the world's leading providers of communications, information, and entertainment products and services. Headquartered in New York City, Verizon is a holding company whose operating subsidiaries offer voice, data, and video services and solutions on its award-winning networks and platforms in California and throughout the United States and the world, delivering on customers' demand for mobility, reliable network connectivity, security, and control.

Verizon's subsidiaries provide communications services to consumers, businesses, and government customers, as well as to other carriers.[5] Verizon's wireless division, Cellco Partnership d/b/a Verizon Wireless,[6] provides nationwide voice and data services to nearly 120 million total wireless connections including

---

[5] References to Verizon's services and network herein refer to those of its wholly owned operating subsidiaries.

[6] Cellco Partnership's California operating company holds its authority under certificate number U-3001-C.

nearly 94 million consumer wireless customers across an extensive and reliable wireless network that comprises the largest 4G LTE network of any U.S. wireless service provider. Historically, the focus of Verizon's wireless business has been selling to postpaid customers. Verizon also was the first company in the world to launch a commercial 5G mobile network with a commercially-available 5G-enabled smartphone, and it just became the first U.S. wireless network to secure 5G global roaming service.

B. TracFone

TracFone is an indirect, wholly owned subsidiary of América Móvil.[7] It sells and distributes prepaid, no-contract wireless services and wireless phones throughout the United States, including in California. TracFone is not a facilities-based carrier and does not hold wireless radio licenses. Rather, TracFone is an MVNO that uses the networks of facilities-based wireless or mobile carriers, including, predominantly, the network of Verizon, to provide its services. The company offers monthly prepaid plans, which are purchased by more than 78 percent of its customer base. It also offers pay-as-you-go service enabling customers to purchase prepaid cards and minutes that can be used with the mobile devices of TracFone customers and last up to a full year.[8]

---

[7] TracFone is a wholly owned subsidiary of AMX USA Holding, S.A. de C.V., which is a wholly owned subsidiary of Sercotel, S.A. de C.V. ("Sercotel"). Sercotel, in turn, is a direct wholly owned subsidiary of América Móvil. *See, e.g.*, *International Authorizations Granted*, Public Notice, File No. ITC-ASG-20160801-00229, 31 FCC Rcd 9681, 9683 (IB 2016) ("*TracFone International 214 Grant*").

[8] TracFone also offers international calling card solutions to its customers. *See, e.g.*, Straight Talk Wireless | Unlimited International Calling, https://www.straighttalk.com/wps/portal/home/shop/unlimitedinternational (last visited Sept. 30, 2020); View Our International Calling Options | Total Wireless, https://www.totalwireless.com/shop/ild (last visited Sept. 30, 2020). Unlike prepaid calling cards that can be used from any fixed or mobile connection to the public network, the calling card

Besides offering phone plans directly under the TracFone brand, TracFone also offers consumers several other prepaid brands, including SafeLink Wireless, Straight Talk Wireless, Net10 Wireless, Walmart Family Mobile, Total Wireless, Go Smart Mobile, Page Plus, and Simple Mobile. Through its Clearway brand, TracFone also offers plans tailored to the needs of business customers. Collectively, the brands account for more than 20 million prepaid wireless customers in the U.S., approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of whom are in California. TracFone's phones and SIM card kits with service are sold at numerous retail stores, including Walmart, Target, and Best Buy. TracFone is also carried by online retailers such as Amazon and the Home Shopping Network.

C. América Móvil

América Móvil is a public stock corporation with variable capital organized under the laws of Mexico with its principal executive offices in Mexico City, Mexico. Mr. Carlos Slim Helú and certain members of his immediate family ("the Slim Family") hold majority equity and voting interests in América Móvil; no other individual or entity holds a direct or indirect 10 percent or greater equity or voting interest in América Móvil.[9]

---

solutions offered by TracFone can only be used with TracFone-provided devices because they are tied to the customer's mobile device identifier. As such, these are adjunct to the CMRS services provided by TracFone.

[9] *See, e.g.*, *International Authorizations Granted*, Public Notice, File No. ITC-ASG-20160801-00229, 31 FCC Rcd 9681, 9683 (IB 2016) ("*TracFone International 214 Grant*").

III. THE TRANSACTION

On September 13, 2020, the Joint Applicants entered into an agreement (the "Agreement") pursuant to which Verizon will acquire TracFone from América Móvil. Under the Agreement, América Móvil will sell all of its interests in TracFone to Verizon in exchange for $3.125 billion in cash and $3.125 billion in Verizon common stock, subject to customary adjustments, at closing. The Agreement also includes up to an additional $650 million in future cash consideration related to the achievement of certain performance measures and other commercial arrangements. Upon completion of the Transaction, TracFone will become a wholly owned direct subsidiary of Verizon, and TracFone's subsidiaries will become wholly owned indirect subsidiaries of Verizon. Exhibit 1 includes corporate organizational charts depicting the Transaction.

Upon completion of the Transaction, the Commission will retain the same regulatory authority over Verizon, its operating subsidiaries, and TracFone that it has today, and Verizon, its subsidiaries, and TracFone will continue to conduct business in California in accordance with all applicable laws, rules, and Commission orders.

IV. THE PARTIES' REASONS FOR THE TRANSACTION: RULE 3.6(C)

The Transaction will enhance Verizon's ability to compete for and better serve value-oriented customers. Verizon's current presence in the prepaid segment is largely as a wholesale provider; although it has a small retail prepaid presence through its brands Verizon Prepaid and Visible, it does not own an established flanker brand that it can use to attract value customers. In contrast, Verizon's main competitors have a substantial retail presence in the prepaid segment: for example, T-Mobile acquired MetroPCS (now Metro) in 2013 and now has more than 20 million retail prepaid customers nationwide,[10] AT&T acquired Cricket in 2013 and now has approximately 18 million retail prepaid customers nationwide,[11] and DISH has more than 9 million retail prepaid customers nationwide after acquiring the prepaid brand Boost and its customer base from Sprint.[12] The Transaction will give Verizon the ability to serve a greater number of prepaid customers and an incentive to compete aggressively for prepaid customers, challenging T-Mobile, AT&T, and DISH. Verizon looks forward to better serving current TracFone customers, and attracting new prepaid customers, as it extends the benefits of its award-winning network, advanced services, and greater range of Verizon-compatible devices into the prepaid segment.

In addition, TracFone is already the primary distribution partner of Verizon's wholesale prepaid service: almost 64 percent, or approximately 7.6 million, of TracFone customers nationwide use Verizon's network. The Transaction is thus a

---

10 *See* T-Mobile US, Inc., *Supercharging the Un-carrier: Financial Results, Supplementary Data, Non-GAAP Reconciliations, Reconciliation of Operating Measures*, at 5 (Q2 2020), https://s24.q4cdn.com/400059132/files/doc_financials/2020/q2/ER-Tables-Final.pdf. T-Mobile's branded prepaid customers include customers of T-Mobile and Metro by T-Mobile. *See* T-Mobile US, Inc., Annual Report (Form 10-K), at 6 (Feb. 6, 2020), https://s24.q4cdn.com/400059132/files/doc_financials/2019/ar/TMUS-2019-Annual-Report_WD-(Final).pdf.

11 *See* AT&T Inc., 2020 AT&T Earnings, Investor Briefing, at 17 (July 23, 2020), https://investors.att.com/~/media/Files/A/ATT-IR/financial-reports/quarterly-earnings/2020/q2-2020/q2-2020-investor-briefing.pdf. AT&T's prepaid services are offered under the Cricket and AT&T PREPAID℠ brands. *See* AT&T Inc., Annual Report (Form 10-K), at 5 (Jan. 31, 2020), https://otp.tools.investis.com/clients/us/atnt2/sec/sec-show.aspx?FilingId=13936660&Cik=0000732717&Type=PDF&hasPdf=1.

12 *See* DISH Network Corporation, Quarterly Report (Form 10-Q) (Aug. 7, 2020), https://ir.dish.com/static-files/6442f61e-796d-4500-9a7f-5a3a0d15caa1.

natural evolution of Verizon's wholesale distribution relationship with TracFone, and Verizon plans to grow TracFone's business as a result of the Transaction.

América Móvil has made the decision to sell its interest in TracFone and to focus for now on the balance of its wireless and wireline operations in the Americas and Europe.

V. STANDARD OF REVIEW

The standard traditionally applied by the Commission to determine whether a transaction should be approved under Section 854(a) is whether the transaction will be "adverse to the public interest."[13] As the Commission has explained: "[w]e have noted in a number of recent decisions approving transfers of control that, because California 'reaps enormous benefits' from public utility services, it is 'in the public interest to foster a business climate in California that is hospitable to utilities.'"[14] The Commission has thus "ruled that Section 854(a) transactions 'should be approved absent a compelling reason to the contrary.'"[15]

The Commission has approved multiple transfers of control of prepaid wireless providers under the streamlined process for transfers of ownership of CMRS providers under Decision 95-10-032.[16] For example, the Commission did not

---

[13] D. 07-05-061, 2007 Cal. PUC Lexis 227, at *34 (Sept. 22, 2006).

[14] D. 09-10-056, 2009 Cal. PUC Lexis 546, at *21-*22 (quoting and citing D. 04-08-018, Cal. PUC Lexis 424 (Aug. 19, 2004) (SureWest reincorporation)).

[15] *Id.* (quoting D. 04-08-018, Cal. PUC Lexis 424 (Aug. 19, 2004) (SureWest reincorporation)); *see also* D. 04-09-023, 2004 Cal. PUC Lexis 607 (Sept. 2, 2004) (Comm South/Arbros); D. 05-05-014, 2005 Cal. PUC Lexis 176 (May 5, 2005) (Cal-Ore Telephone/Lynch Interactive); D. 05-06-012, 2005 Cal. PUC Lexis 216 (June 16, 2005) (Supra Telecommunications); D. 05-08-006, 2005 Cal. PUC Lexis 569 (Aug. 25, 2005) (Highspeed Communications/Northwest Telephone); D. 06-02-033, 2001 Cal. PUC Lexis 1070 (Dec. 11, 2001) (PacifiCorp).

[16] D. 95-10-032, 1995 Cal. PUC LEXIS 888, at *45-46 (Oct. 18, 1995).

require applications for, or engage in formal review under Section 854 of, T-Mobile's acquisition of MetroPCS (now Metro) in 2013, AT&T's acquisition of Leap Wireless (the parent of Cricket) in 2014, or DISH's recent acquisition of Boost Mobile. The Commission's past use of Decision 95-10-032's streamlined process to forgo review of transfers of control over prepaid wireless providers means that any review of the Transaction here should be similarly limited.

And that review must be limited to the public interest standard under Section 854(a); subsections (b) and (c) of that section do not apply here because neither TracFone, América Móvil, nor Verizon has gross California revenues that exceed $500 million. TracFone's California-derived revenues have been below $500 million in each of the past two calendar years.[17] And, as holding companies, Verizon and América Móvil have no California revenues. According to Section 854(f), in determining whether an acquiring entity has gross annual revenues exceeding the amount specified in subdivisions (b) and (c), the revenues of that utility's affiliates are not considered unless the affiliate was utilized for the purpose of effecting the merger, acquisition, or control. Here, none of Verizon's California affiliates were utilized in this fashion, and thus their revenues are irrelevant.

Even if the Transaction triggered Public Utilities Code Section 854(b) and (c) – which it does not – this is not the type of transaction to be reviewed under those subsections. Section 853(b) gives the Commission broad power to exempt a

[17] *See* Declaration of Chesley Dillon, attached as Confidential Exhibit 5 (showing TracFone's gross California revenues for calendar years 2018 and 2019).

transaction from such review if the review "is not necessary in the public interest."[18] Indeed, the Commission has recognized specifically that "the Legislature intended to grant the Commission significant flexibility in deciding whether to apply §§ 854(b) and (c) to telecommunications transactions."[19] The Commission has repeatedly used this authority to exempt transactions involving telecommunications utilities from review under Sections 854(b) and (c), in light of "(i) specific characteristics of the merger applicants; (ii) the state of and the impact on the market as a whole; and (iii) the likelihood that competitive pressures and [the Commission's] regulatory regime will cause benefits achieved through the combination to flow through to consumers."[20] Exemption from review under Sections 854(b) and (c) would be appropriate here even if those subsections applied, for the reasons that the Commission has previously identified in exempting other transactions from such review.[21]

First, "the proposed transaction does not involve the acquisition of an ILEC,"[22] nor does it "involve putting together two traditionally regulated telephone systems."[23] The Commission has "uniformly" exempted transactions involving non-dominant inter-exchange carriers ("NDIECs") and competitive carriers from the

---

[18] Pub. Util. Code § 853(b); *see* D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *23-24 (Nov. 18, 2005) (SBC-AT&T).

[19] D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *30 (Nov. 18, 2005) (SBC-AT&T).

[20] *Id.* at *26.

[21] *See, e.g.*, *id.*; D. 05-11-029, 2005 Cal. PUC LEXIS 517, at *30 (Nov. 18, 2005) (Verizon-MCI); D. 97-05-092 1997 Cal. PUC LEXIS 340, *1 (May 21, 1997) (British Telecom-MCI).

[22] D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *33 (Nov. 18, 2005) (SBC-AT&T).

[23] D. 98-05-022, 1998 Cal. PUC LEXIS 533, at *24 (May 7, 1998) (AT&T-TCG).

requirements of Section 854(b) and, "with limited exception," from Section 854(c).[24] The Commission has previously noted that "TracFone is a NDIEC operating as a reseller of mobile telephone services registered as a cellular telephone carrier."[25] Moreover, as in those transactions, "none of the parties . . . is subject to traditional rate regulation,"[26] and "the acquired company's California operations will comprise a very small proportion of the combined company's total operations," which are facts that weigh against undertaking a searching review of the factors under Section 854(b) and (c).[27]

Second, TracFone operates in a competitive environment. The Commission has previously recognized that there is extensive competition among MVNOs.[28] As with the acquired companies in previously exempted transactions, TracFone "has grown (and shrunk) under competitive market forces at the sole risk of its shareholders; it has no captive ratepayer base."[29]

Third, the allocation of economic benefits analysis under Section 854(b) would be improper here, as "[a]ny attempt to use traditional cost-based rate of

---

24 D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *33 (Nov. 18, 2005) (collecting cases); D. 05-11-029, 2005 Cal. PUC LEXIS 517, at *31.

25 D. 12-10-018, 2012 WL 5246456 (Oct. 11, 2012).

26 D. 05-11-029, 2005 Cal. PUC LEXIS 517, at *30; *see also* D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *35.

27 D. 05-11-029, 2005 Cal. PUC LEXIS 517, at *30 (Nov. 18, 2005) (Verizon-MCI).

28 *See* D. 16-12-025, 2016 WL 7243749, at *89 (Dec. 1, 2016) ("[T]here is more competition in OTT voice and MVNO wireless, the provision of which involves no facilities-based transmission on the part of the provider, than there is in at least partly facilities-based services provided by traditional competitive carriers.").

29 D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *37; D. 05-11-029, 2005 Cal. PUC LEXIS 517, at *33.

return mechanisms to mandate distribution of [transfer] benefits would be detrimental to the operation of market forces and contrary to the main thrust of the 1996 Telecommunications Act, state telecommunications policy, and this Commission's stated policies under [New Regulatory Framework]."[30] And specifically, "[a]s the Commission does not have ratemaking authority over wireless carriers, Section 854(b)(2) is not applicable here."[31] As the Commission has previously concluded with regard to acquisitions of telecommunications companies that are not traditionally regulated, "'competitive market forces, rather than mandated rate reductions,' should distribute merger benefits to ratepayers, and review of the transaction under § 854(b) would be a 'futile exercise' that [is] 'not in the public interest.'"[32]

Although the Commission has on occasion considered the Section 854(c) factors in reviewing transactions under Section 854(a), the Commission has not applied the Section 854(c) factors in ruling on recent requests for parent-level transfers of control over CLECs and NDIECs,[33] and it should not do so here. Rather, the appropriate standard of review for the Transaction under Section 854(a) is

---

30 D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *40; D. 05-11-029, 2005 Cal. PUC LEXIS 517, at *37.

31 D.20-04-008, 2020 WL 2487298 (Apr. 16, 2020) (Sprint–T-Mobile).

32 D. 05-11-028, 2005 Cal. PUC LEXIS 516, at *27-28 (quoting D. 97-05-092, 1997 Cal. PUC LEXIS 340, *27-31 (May 21, 1997)).

33 D. 12-11-037, 2012 Cal. PUC LEXIS 524, at *4 (Nov. 29, 2012); D. 12-10-013, 2012 Cal. PUC LEXIS 454, at *4 (Oct. 11, 2012); D. 06-02-020, 2006 Cal. PUC LEXIS 77, at *6 (Jan. 11, 2006); *see also* D. 12-09-007, 2012 Cal. PUC LEXIS 413, at *9 (Sept. 13, 2012) (asking whether the transaction is "in the public interest"); D. 99-06-016, 1999 Cal. PUC LEXIS 520, at *6 (June 3, 1999) (same).

whether it is adverse to the public interest, *i.e.*, whether there is a compelling reason not to approve the Transaction. There is no such compelling reason here.

VI. THE PUBLIC INTEREST STANDARD: SECTION 854(A)

The Transaction meets the standard under Section 854(a) because it is not adverse to the public interest, but rather provides affirmative benefits to the public: it will generate substantial benefits to customers and employees while maintaining or improving competition among wireless providers.

First, the Transaction will allow Verizon to bring its resources to TracFone, which has experienced a recent decline in its overall customer base, so that it can expand its prepaid business and benefit prepaid consumers. In particular, TracFone customers will gain access to a wider variety of Verizon-compatible devices, new technologies and service options (like 5G), and more international roaming options. Verizon will also migrate those TracFone customers whose service currently rides on the networks of other facilities-based carriers to the award-winning Verizon network. These changes will occur in a seamless fashion for customers.

Wider variety of devices. Verizon will deliver to TracFone customers a wider variety of Verizon-compatible devices than they enjoy today. As a provider of choice for wireless device manufacturers, Verizon is the launch partner for new, innovative, and competitively priced device offerings. The transaction will allow Verizon to expand the portfolio of Verizon-compatible devices available to all TracFone customers, such as more low cost devices (with both 4G LTE and 5G); hotspots (which let the consumer share his or her network connection with other devices using Wi-Fi to access the internet); jetpacks (separate devices that let customers wirelessly share their network connections with other devices); children's watches; a 4G fixed wireless device; low cost flip phones with app store capabilities; and more.

Access to new technologies and service options (like 5G). Verizon will bring its world-class vision for 5G and other technological advances to TracFone customers. And by transitioning all TracFone customers to the Verizon network over time, TracFone customers served now by other networks will be able to enjoy access to Verizon's 5G services as part of the Verizon family. Verizon also plans to offer TracFone customers new service opportunities, including access to home internet solutions.

Superior network performance. Following the Transaction, all TracFone customers in areas where Verizon has a network, including those whom Verizon will migrate from other host networks, will experience Verizon's award-winning network quality. TracFone customers will benefit from the innovative approach and service experience that have made Verizon the leading provider of postpaid mobile services, including excellent network performance.

Improved international roaming options. The Transaction will improve international service options for many TracFone customers traveling in other countries. Today, most of TracFone's brands do not offer international roaming options, and those that do limit those options to a handful of countries. Thus, the majority of TracFone customers are not able to use their prepaid devices in other countries because of limited roaming options available to them. Verizon will make international roaming options more broadly available to TracFone customers at competitive pricing, and it anticipates that those offerings will cover more than 100 countries around the world.

Expanded distribution. Verizon's rationale for the Transaction is rooted in growing TracFone's business. As part of that effort, Verizon intends to use TracFone's existing distribution points, and to develop thousands of additional distribution points – some of which will expand distribution exclusively for TracFone brands – in a variety of geographic areas. This will provide even more value-conscious consumers with access to TracFone's innovative prepaid plans and Verizon's network.

Seamless transition for customers. The Transaction will be largely seamless to TracFone's customers. As noted, almost two thirds of TracFone's customers already use the Verizon network, and Verizon plans to gradually and naturally transition the remainder to the Verizon network in a manner that will be consistent with the heavy churn that occurs in the prepaid segment. As a result, TracFone customers will not experience any loss, interruption, or impairment to their services.

Offerings for value-oriented consumers. Verizon entered the Transaction to better serve the value-conscious consumer and is committed to providing offerings to TracFone's current and future customers that are designed to expand TracFone's presence in this segment. Extending the consumer benefits described above – access to a wider variety of Verizon-compatible devices, new services, technological advances, and roaming options – to TracFone customers will make TracFone more competitive among value-conscious consumers in the prepaid segment.

Competition for value customers by offering low price options. Verizon is committed to serving TracFone's customers and to competing vigorously in the prepaid segment through low price options and plans that offer great value. Demonstrating that commitment, Verizon will not require TracFone customers to move to a more expensive plan when the Transaction closes. And going forward, Verizon will provide a range of prepaid plans so customers can enjoy mobile access at price points that work for them.

Lifeline Services. TracFone provides Lifeline services to approximately 1.7 million customers nationwide, primarily through its SafeLink brand,[34] and provides such services to approximately 230,000 Lifeline subscribers in California. Verizon intends to maintain TracFone's Eligible Telecommunications Carrier ("ETC") status and will continue to offer Lifeline through TracFone in California where it will offer service through its own network.

Second, the Transaction will have minimal, but positive, effects on TracFone's employees in California. There are two TracFone employees in California who will move with TracFone to Verizon. Verizon looks forward to welcoming TracFone's employees to the Verizon family. Verizon has been recognized as one of the top-rated workplaces for compensation and benefits, and TracFone's employees will enjoy Verizon's generous employee benefits package. In addition, Verizon was ranked number one on the new Forbes Corporate Responders ranking list, which assessed how well the country's top employers responded to the COVID-19 public

[34] TracFone also offers Lifeline services to eligible customers through other brands, including Walmart Family Mobile and Straight Talk.

health crisis. TracFone's employees will also benefit from Verizon's well-deserved reputation for workplace diversity and inclusion.

Third, the Transaction will enhance, rather than impede, competition, because Verizon will be better able to compete in the prepaid wireless segment and because the Transaction will not materially impact the broader market for mobile telephony and broadband services.

Enhanced competition for prepaid customers. The Transaction will increase customer choice and competition by enabling Verizon to compete and better serve prepaid customers – an area in which Verizon historically has had a limited retail presence, as noted above. Verizon Wireless has the smallest share of prepaid subscribers among nationwide wireless service providers,[35] substantially lower than AT&T, T-Mobile, and DISH.[36] Verizon does not own an established "flanker brand" that differentiates its core brand and attracts prepaid customers,[37] as AT&T has with Cricket, T-Mobile has with Metro, and DISH plans to have with Boost. Like those other brands, TracFone has spent decades developing deep knowledge of value-conscious customer behavior. By adding TracFone's established value brands to Verizon's offerings, the Transaction will expand Verizon's retail prepaid presence, allowing Verizon to compete more vigorously in the prepaid segment. This strategy has been successful for Verizon's facilities-based competitors, which entered the

---

[35] *Communications Marketplace Report*, 33 FCC Rcd at 12571 ¶ 16.

[36] *See supra* Section IV.

[37] While Verizon offers retail prepaid services through its brands Visible and Verizon Prepaid, those offerings are very small both for Verizon and relative to other prepaid providers.

prepaid segment the same way – AT&T through its acquisition of Cricket, and T-Mobile through its acquisition of Metro.

Nearly two-thirds of TracFone's customers are served on the Verizon network, and Verizon intends to ultimately migrate all TracFone customers riding on other networks to the Verizon network where it is available by using attractive offers and promotions. Of course, during this period the prepaid segment will continue to evolve: the churn rate among prepaid customers is significant – more than 48 percent annually[38] – and other prepaid competitors, including AT&T, T-Mobile, and DISH, no doubt will respond to the new Verizon-backed TracFone prepaid offerings.

<u>No material impact on the broader mobile telephony/broadband services market</u>. Assuming that all 7.6 million TracFone customers currently riding on other networks migrate to the Verizon network, the impact on customer aggregation in the broader mobile/telephony market would be negligible. That market is already robustly competitive across all generally accepted metrics of competition.[39] DISH also will be emerging as an independent facilities-based operator in the near term. The impact of attributing an additional 7.6 million customers to Verizon (presuming all TracFone customers migrate) and holding the rest of the mobile

---

38 *See Communications Marketplace Report*, 33 FCC Rcd at 12567 ¶ 11 & n.33.

39 *See Communications Marketplace Report*, 33 FCC Rcd at 12563-79 ¶¶ 8-24 (finding that (i) the number of wireless connections and average data usage per connection have been rising; (ii) average prices have been failing, and service providers compete on pricing and features; (iii) significant network investments have resulted in higher data speeds, expanded network coverage, and increased network densification; (iv) at least 90 percent of consumers are covered by multiple LTE networks; and (v) service providers compete by offering a large variety of mobile wireless devices and differentiated services); Federal Communication Commission, *Twentieth Competition Report*, 32 FCC Rcd at 9037 ¶ 93 (concluding that "there is effective competition in the marketplace for mobile wireless services").

telephony/broadband services market static is *de minimis* in the larger wireless marketplace, representing the net addition of *roughly two percent* of all mobile wireless connections nationwide.

These benefits to consumers, employees, and competition in the prepaid segment, without any countervailing detriments, demonstrate that the Transaction is in the public interest. TracFone will continue to exist and provide service to its customers, while Verizon will enlarge its presence in the prepaid segment and expand its customer base, positioning itself to offer better service to a greater number of customers.

This Transaction warrants an accelerated approval process. Expedited approval is amply supported by Commission precedent. In D.12-09-007, for instance, the Commission approved the transfer of a California-certificated CLEC and NDIEC, Pac-West, from one non-utility holding company to another. The acquiring entity did not itself hold authorizations to provide telecommunications services, though its subsidiaries did possess such authorizations. The Commission found that the change in ownership was in the public interest "because the entity currently providing service will not change, and there will be no change to the rates, terms, and conditions of the services it provides. Pac-West will continue to hold its CPCN authorizing the company to provide telecommunications service in California. UPH [the acquiring holding company] will not offer service itself."[40]

---

[40] D. 12-09-007, 2012 Cal. PUC LEXIS 413, at *2, *9-10.

Similarly, in D. 12-11-037, the Commission approved the transfer of control over Sprint Communications, a CLEC and NDIEC.[41] The Commission found "that the transaction is consistent with the public interest" because "[t]here will be no immediate changes to . . . the service that Sprint Communications provides as a result of the transfer"; "there will be no interruption or disruption of service to customers"; "[t]he transaction will thus be seamless for Sprint Communication's customers"; and "the transfer of control will enable Sprint Communications to become a stronger competitor." The result would thus be that "[i]ncreased competition will benefit consumers and the telecommunications marketplace."[42] Several other Commission decisions exhibit similar reasoning,[43] which also applies here: TracFone will continue to provide prepaid wireless service, and the Transaction will effect a seamless transition for TracFone's customers, who will be able to choose from value-conscious plans while gaining access to Verizon's wider range of offerings and superior network. Quality service benefits not just customers but local economies and communities as well.[44] In keeping with the Commission's past decisions, the Commission should thus approve the Transaction under Section 854(a) because it is in the public interest.

---

[41] D. 13-05-018, 2013 Cal. PUC LEXIS 277, at *1 (Cal. P.U.C. May 23, 2013) (Sprint-Starburst).

[42] *Id.* at *15-16.

[43] D. 12-11-037, 2012 Cal. PUC LEXIS 524, at *1-4, *7-8; D. 12-10-013, 2012 Cal. PUC LEXIS 454, at *1-4, *7; D. 06-02-020, 2006 Cal. PUC LEXIS 77, at *2-3, *7; D. 99-06-016, 1999 Cal. PUC LEXIS 520, at *1-3, *5.

[44] D.09-10-056, 2009 Cal. PUC Lexis 546, at *26 ("The proposed transaction will benefit the local economies served by Frontier California and the affected Verizon exchanges because it will continue and enhance Frontier's service.").

VII. PROCEDURAL REQUIREMENTS

A. Name and Address of Joint Applicants: Rule 2.1(a)

Verizon is a Delaware corporation with its principal place of business at 1095 Avenue of the Americas, New York, New York, 10036. TracFone is a Delaware corporation, with its principal place of business at 9700 NW 112th Avenue, Miami, FL. América Móvil is a Mexican corporation headquartered in Mexico City, Mexico. The legal names of each of these entities are set forth above.

B. Correspondence and Communications: Rule 2.1(b)

All correspondence and communications concerning this Joint Application should be directed to counsel as indicated below:

For TracFone and América Móvil:

Daniel K. Alvarez
Mia Guizzetti Hayes
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006
Telephone: 202-303-1000
Email: dalvarez@willkie.com
mhayes@willkie.com

For Verizon:

Jesús G. Román
Public Policy & Legal Affairs
Verizon
15505 Sand Canyon Ave. D204
Irvine, CA 92618
Telephone: 949-286-7202
jesus.g.roman@verizon.com

With a copy to:

Jane Whang
Public Policy & Legal Affairs
Verizon
201 Spear St, Room N/A,
San Francisco, CA 94105
Telephone: 415-778-1022
jane.whang@verizon.com

C. Proposed Categorization and Schedule: Rule 2.1(c)

1. Proposed Categorization: The matters raised in this Joint Application do not fit clearly into any of the procedural categories identified in Rule 1.3, *i.e.*, adjudicatory, rate-setting, or quasi-legislative. Therefore, pursuant to Rule 7.1(e)(2) and 1.3(f), the proceeding initiated by this Joint Application should be categorized as rate-setting. This categorization would be consistent with the Commission's categorization of previous proceedings involving Section 854 transactions.[45]

2. Need for Hearings: The Commission has considered several other transactions under Sections 851 through 854 without holding hearings.[46] Indeed, the Commission did not subject T-Mobile's acquisition of MetroPCS or AT&T's acquisition of Cricket to formal review at all, much less in proceedings involving hearings. This Joint Application does not raise any issue that is materially different from previous transactions considered and resolved by the Commission. The Transaction is a transfer of control at the parent level of an existing operating company to a long-established holding company that is well known to the Commission and that already offers, via its subsidiaries, services in California.

[45] *See, e.g.*, D. 05-11-029, 2005 Cal. PUC Lexis 517, at *191 (Nov. 18, 2005) ("This proceeding is a ratesetting proceeding.").

[46] *See, e.g.*, *id.* at *4.

Accordingly, the documentation and information contained herein should be sufficient for the Commission to issue a decision without evidentiary hearings.

3. Issues: The issue to be decided in this proceeding is whether the Transaction meets the public interest standard under Section 854(a).

4. Proposed Schedule: The Commission should initially set the schedules as follows:

November 5, 2020 – Application Filed

Notice of Application in Daily Calendar + 30 days – Protest deadline

Protest deadline + 10 days – Deadline for replies to protest

Reply deadline + 1 month – Proposed Decision Issued

Proposed Decision issuance + 2 months – Final Decision Adopted

D. Organization and Qualification to Transact Business: Rule 2.2

Articles of incorporation for each applicant are attached collectively as Exhibit 3.

E. California Environmental Quality Act ("CEQA") Compliance: Rule 2.4

The proposed Transaction does not involve a "project" under California Code of Regulations 15378 and does not have any potential for effectuating a physical change in the environment. Accordingly, there are no negative environmental impacts associated with the Joint Application and no CEQA review is necessary. As the Commission explained in a 2010 decision: "Because the proposed transaction involves only an indirect change in ownership of stock and exchanges, it does not constitute a 'project' under [CEQA]. The application does not request authority for new construction, nor will it result in any changes to the current use of assets.

Accordingly, there is no possibility of any significant environmental impact associated with the joint application, and no CEQA review is necessary."[47] The same conclusion should be reached here.

F. Character of Business: Rule 3.6(a)

The character of business performed and the territory served by each Joint Applicant are described in Section II, above.

G. Description of the Property Involved: Rule 3.6(b)

The California property involved includes all property identified in the Agreement, including all of América Móvil's interests in TracFone, as described in Exhibit 1, and thereby TracFone in its entirety.

H. Terms and Condition of the Proposed Transaction: Rule 3.6(d) and (f)

The terms and conditions of the proposed Transaction are described in Section III and in the Agreement dated as of September 13, 2020, which is attached to this Joint Application as Confidential Exhibit 2.

I. Financial Statement: Rule 3.6(e)

Financial statements for TracFone, Verizon and América Móvil are shown in Exhibits 4 (Confidential), 6 (Public, Verizon 10-K) and 7 (Public, América Móvil 20-F), respectively.

VIII. CONSUMMATION OF THE TRANSACTION AND COMPLIANCE ISSUES

At the completion of the Transaction, TracFone will continue to operate as a legally distinct corporate entity in California and will become a wholly owned direct

[47] D.09-10-056, 2009 Cal. PUC Lexis 546, at *27.

subsidiary of Verizon, and TracFone's subsidiaries will become wholly owned indirect subsidiaries of Verizon. TracFone holds a wireless registration with the Commission (U-4231-C) allowing it to operate as a reseller of commercial mobile radio service to the public in California, and is authorized as an ETC to offer California LifeLine service plans.[48] TracFone is retaining its wireless registration, which is not being transferred within the meaning of Decision 13-05-035. Nevertheless, for informational purposes Verizon provides the following certification as contemplated in Ordering Paragraph 15 of D.13-05-035.

Verizon's subsidiaries have entered into settlement agreements that included voluntary payments or monetary forfeitures to resolve actions by federal and state regulatory agencies and attorneys general. Verizon's public utility operating subsidiaries in California have been the subject of various complaint proceedings and investigations before this Commission alleging violations of the Public Utilities Code and/or the Commission rules. Decisions in these proceedings, which are known to the Commission, may have resulted in findings of violations, fines or settlements. Likewise, Verizon's operating subsidiaries have been the subject of civil class actions alleging violations of the California Business and Professions Code or related consumer claims (e.g., Consumer Legal Remedies Act) that may have resulted in settlements and monetary payments. Verizon is required to file annual and quarterly reports with the Securities and Exchange Commission. As required by applicable SEC rules, Verizon discloses its material legal proceedings in

---

48 *See* CPUC Resolution T-17566, 2017 Cal. PUC LEXIS 256, at *3 & n.3 (May 25, 2017).

these reports. This link: http://www.verizon.com/investor/secfiling.htm provides the Commission with these filings dating back years. In addition, these filings provide the Commission with information concerning the backgrounds of Verizon's current directors and officers and its financial statements.

IX. RELIEF REQUESTED

The parties respectfully request that the Commission:

1. Confirm exemption of the Transaction from review under Section 854(b) and (c) of the California Public Utilities Code, (a) because neither of the parties to the transaction have gross California revenues that exceed $500 million or (b) pursuant to the Commission's authority under Section 853(b) of the California Public Utilities Code;

2. Approve the Transaction as described in this Joint Application and the Agreement under Sections 851-854 of the California Public Utilities Code;

3. Approve the change in control of TracFone to be effectuated through the transactions described herein, including the transfer of control of TracFone to Verizon.

4. Order such other relief as may be necessary to effectuate the Transaction as set forth in the Agreement.

X. CONCLUSION

Joint Applicants request that this Joint Application be approved, without hearings, in accordance with the schedule set forth above.

Respectfully submitted,

November 5, 2020

____
Jesús G. Román
Verizon
15505 Sand Canyon Avenue
Irvine, CA 92618
Tel: (949) 286-7202
E-mail: jesus.g.roman@verizon.com

Attorney for Verizon Communications Inc.

/s/
Daniel K. Alvarez
Mia Guizzetti Hayes
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006
Telephone: 202-303-1000
Email: dalvarez@willkie.com
mhayes@willkie.com

Attorneys for América Móvil, S.A.B. de C.V. and TracFone Wireless, Inc.

VERIFICATION

I, Rudolph M. Reyes, declare as follows:

I am authorized to make this verification on behalf of Verizon Communications Inc. ("Verizon"). I have read the foregoing Joint Application.

Based on reasonable investigation, I am informed and believe that the matters contained in this document concerning Verizon are true and correct and on that basis I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 5th of November 2020 at San Francisco, California

Rudolph M. Reyes
Vice President, State Legal, Regulatory,
Public Policy & Community Engagement
for Verizon in the Western U.S.

VERIFICATION

I, Richard B. Salzman, declare as follows:

I am authorized to make this verification on behalf of TracFone Wireless, Inc. ("TracFone"). I have read the foregoing Joint Application.

Based on reasonable investigation, I am informed and believe that the matters contained in this document concerning TracFone are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 5th day of November 2020 at Miami, Florida.

_______/s/__________
Richard B. Salzman
Executive Vice President
and General Counsel
TracFone Wireless, Inc.

VERIFICATION

I, Alejandro Cantú Jiménez, declare as follows:

I am authorized to make this verification on behalf of América Móvil, S.A.B. de C.V. ("América Móvil"). I have read the foregoing Joint Application.

Based on reasonable investigation, I am informed and believe that the matters contained in this document concerning América Móvil are true and correct and on that basis I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 5th day of November 2020 at Mexico City, Mexico.

______/s/__________
Alejandro Cantú Jiménez
General Counsel
América Móvil, S.A.B. de C.V.